

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
J. M. TROXLER }

Appearances.:

For Appellant: J. M. Troxler, in propria persona

For Respondent: Burl D. Lack, Chief Counsel;
John S. Warren, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of J. M. Troxler to proposed assessments of additional personal income tax in the amounts of \$50.84, \$61.54, \$61.60, and \$65.80 for the years 1952, 1953, 1954, and 1955, respectively.

Appellant was employed for over thirty years by the California Packing Corporation. He was transferred from plant to plant some forty times. He was unmarried and supported his mother, who is conceded to be his dependent. He owned a home in Hanford, California, where he and his mother lived in the year 1944 while he worked in the cannery at Kingsburg, California. In 1945 he was transferred to Honolulu for a short period, and thereafter was frequently transferred among various plants of his employer in California. He worked in Yuba City, California from March, 1950, through 1952, and during 1953, 1954, and 1955 he was at the plant in San Leandro, California.

From the time Appellant left his Hanford home in 1945 and until he quit his employment in February, 1956, and returned thereto, he maintained the Hanford house. His dependent mother lived in it except during periods of eight to ten months in each of the years 1952 through 1955 when she was ill. At these times Appellant brought her to the locations where he was working and hired someone to stay with them and to care for her. While away from Hanford, Appellant lived in motels, hotels, and rooms in private homes and apartments. Appellant says that his work away from his Hanford home was necessary as he had to make a living for himself and mother and he has always considered his being away as temporary.

Appellant computed his income tax as though he were a "head of a family" or a "head of a household" and also deducted the amounts spent for meals and lodging as traveling expenses while away from home in pursuit of a trade or business. The Franchise

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Tax Board determined he did not qualify as "head of a family" or "head of a household" because he and his mother were not living in the same household. It also determined that Appellant's costs of meals and lodging were personal living expenses rather than traveling expenses.

Section 17301 of the Revenue and Taxation Code (now Section 17202) provided:

"In computing net income there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business including . . . -traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business ..."

Section 17351 of the Revenue and Taxation Code (now Section 17282) provided:

"In computing net income no deduction shall in any case be allowed in respect of: (a) Personal, living, or family expenses ..."

U. S. Internal Revenue Code provisions comparable to the above quoted California statutes have been construed by the Federal courts. There is some confusion in the Federal cases as to the circumstances under which traveling expenses will be allowed. It is safe to state, however, that traveling expenses will not be allowed if it is reasonably predictable that a taxpayer's work will require, and in fact does require, his presence at a particular location for a lengthy period. (Peurifoy v. Commissioner, 358 U. S. 59; Harvey v. Commissioner, ___ Fed. 2d ___, 6 AFTR 2d 5780.)

Whatever may have been the situation in the earlier years when Appellant was frequently transferred, by 1952 his post or place of employment had stabilized to the extent that he could reasonably **expect** to remain for a considerable time at one place. By that date, the exigencies of his business did not cause him to be in a travel status. His continued maintenance of a house at Hanford, away from the immediate location of his place of employment, was a **matter** of his own choosing and desire. His personal expenses for meals and lodging for 1952 through 1955 cannot be classed as "traveling expenses" and were properly disallowed as deductible by the Franchise Tax Board.

Section 17951 of the Revenue and Taxation Code, as it applied to the year 1952, allowed a personal exemption to a "head of a family." This section was modeled after Internal Revenue

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Code Section 25(b)(1) as it was prior to 1944, in which year the designation "head of a family" was dropped from the Federal Code. California and Federal statutes did not define the term but substantially identical regulations of the two jurisdictions did; Regulation 17951(b), California Administrative Code, Title 18, provided:

"A head of a family is an individual who actually supports and maintains in one household one or more individuals who are closely connected with him by blood relationship ... and whose right to exercise--family control and provide for these dependent individuals is based upon some moral or legal obligation...."

"In the absence of continuous actual residence together, whether or not a person with dependent relatives is, a head of a family within the meaning of the law must depend on the character of the separation...."

Each case must rest on its particular circumstances and reasonableness rather than arbitrary rules. (Miller v. Glenn, 47 Fed. Supp. 794.) If the absence was due to the necessity of earning a living, the exemption was not denied. (Hassard Short, 39 B.T.A. 567; William Lee Tracy, 39 B.T.A. 578.) The moral obligation for support of a dependent mother is evident. The right to exercise family control need be evidenced but slightly. (Percival Parrish, 44 B.T.A. 144.) Appellant, in bringing his dependent mother with him for long periods, and in hiring help to care for her, - evidenced the right of family control. (See also, W. A. Shannon, T. C.--Memo., Dkt. No. 2689, March--30, 1945; Jack Blatchley, T. C. Memo., Dkt. No. 109618 June 24, 1943; Alfred E. Fuhlage, 32 B.T.A. 222; Olive Ross, 37 B.T.A. 228) It is our conclusion that for the year 1952 Appellant is entitled to be classed as "head of a family."

For the years 1953, 1954, and 1955 the question is whether Appellant is entitled to an exemption as a "head of a household." In 1953, Section 17951(a) of the Revenue and Taxation Code was amended to substitute the phrase "head of a household" for "head of a family." "Head of a household" was defined by the addition of Section 17019.9 which provided:

"For the purpose of this part, an individual shall be considered a head of a household if, and only if, such individual is not married at the close of his taxable year and maintains as his home a household which constitutes for such taxable year the principal place of abode, as a member of such

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household, of any person who is a dependent of the taxpayer, if the taxpayer is entitled to an exemption for the taxable year for such person...!'

The phrase "head of a household" was borrowed from Section 12(c), added to the Internal Revenue Code of 1939 by the 1951 amendments. This section provided a special schedule of surtax rates for persons meeting the Federal definition. Prior to the Internal Revenue Code of 1954 both the taxpayer and all classes of dependents had to have a common home before the taxpayer could qualify as a "head of a household." By Section 1(b)(2)(B) of the 1954 Code, the Federal definition was broadened to include a person who provide-d-a separate home for his dependent parent. California, in 1955, enacted Section 17042 of the Revenue and Taxation Code, which took the place of the older Section 17019.9 (quoted above). This section follows Internal Revenue Code Section 1(b)(2) except-t-h-a-t-the language of subsection (B), pertaining to a separatehome for a dependent parent, is omitted in this State.

The California regulation defining "head of a household" for the years 1953 and 1954 is Regulation 17019.9, California Administrative Code, Title 18. In pertinent parts (not dissimilar to the Federal regulation under Section 12(c)), it provides:

"(b) Household ... It is not sufficient that the taxpayer maintain the household without being its-occupant. The taxpayer and such other person must occupy-the household for the entire-taxable year of the taxpayer. They-will be considered as occupying the- household for such entire taxable year notwithstanding temporary absences from the household due to special circumstances. A nonpermanent failure to occupy the common abode by reason of illness, education, business, vacation, military service, or a custody agreement ... [of a child] . . . shall be considered a temporary absence due to special circumstances. Such-absence will not prevent the taxpayer from qualifying as the head of a household if (1) it is reasonable to assume that the taxpayer or such other person will return to the household, and (2) the taxpayer continues to maintain such household or a substantially equivalent household in anticipation of such return." (Emphasis supplied.)

The regulation for the year 1955 is substantially the same in so far as it is material here. (Regulation 17042-17043 California Administrative Code, Title 18.)

The Federal regulation was given a liberal construction in Walter J. Hein, 28 T. C. 826, and Welsh v. United States, 5 A.F.T.R. 2d 397. The regulation is, on its face, designed for

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liberal construction. Due weight must be given to the language that provides that a non-permanent failure to occupy the common abode by reason of business shall be considered as a temporary absence. In Reardon v. United States, 158 Fed. Supp. 745, the court said:

"The taxpayer's household, as Congress recognized, is not always a tangible and stationary thing, but can be somewhat intangible and flexible, reaching outside of the physical bounds of the home to extend its benefits and protection to all of its members, who by reason of special circumstances, cannot be physically present for a time, however long and undetermined."

Upon any view of the evidence, it is clear that Appellant furnished the support for his mother; that they resided together for eight to ten months of each year; and that their periods of separation were of a temporary nature; We conclude that for the years 1953, 1954, and 1955, the Appellant is entitled to be considered as a "head of a household" and should have the personal exemption provided therefor.

O R D E R

Pursuant to the views expressed in the Opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of J. M. Troxler to proposed assessments of additional personal income taxes in the amounts of \$50.84, \$61.54, \$61.60, and \$65.80 for the years 1952, 1953, 1954, and 1955, respectively, be modified as follows: a personal exemption as "head of a family" shall be allowed for the

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year 1952; a personal exemption as a "head of a household" shall be allowed for the years 1953, 1954, and 1955; and the amounts of additional assessments shall be adjusted accordingly, As so modified, said action is hereby sustained,

Done at Sacramento, California, this 13th day of December, 1960, by the State Board of Equalization.

John W. Lynch, Chairman

Richard Nevins, Member

Paul R. Leake, Member

_____, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary